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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers	)	CC Docket No. 92-96
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COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. ("Sprint") hereby respectfully submits its comments in response to the Notice of Proposed Rulemaking, FCC 92-59, released March 12, 1992 in the above-captioned docket ("NPRM").

I. INTRODUCTION

According to the NPRM, the Commission's goal in this proceeding "is to facilitate the timely resolution of formal complaints by eliminating procedures and pleading requirements that have caused unintended and unnecessary delays" (at para. 1). The Commission states that it is "committed to the expeditious resolution of formal complaints" (Id.).

Sprint respects the sincerity of the Commission decision "to facilitate timely resolution of formal complaints", and supports the Commission's announced goal to consider and resolve complaints in a expeditious fashion. Indeed, several of Sprint's own complaints have languished before the Commission for several

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years without decision (e.g., 56 Kilobit, E-87-33, filed January 2, 1987, Sprint v. AT&T, E-89-275, filed July 3, 1989). Even those Sprint complaints which are subject to the statutory deadlines imposed by Section 208(b) of the Communications Act, such as Sprint's Tariff 12 complaints (Sprint v. AT&T, E-90-113, filed February 8, 1990, Sprint v. AT&T, E-91-63, filed February 19, 1991) are not resolved by the Commission in the twelve to fifteen month time frame mandated by that section.

The NPRM proposes to eliminate certain motions, modify particular filing deadlines, and revise the discovery process. Most, if not all, of the proposed changes appear to be directed at speeding up the "front end" of the process--that is, moving parties more quickly through procedures prior to the time briefs are submitted to the Commission for a decision in the formal complaint case. Sprint agrees that some changes in the time periods and other requirements for processing complaints are. By and large, Sprint also agrees with the specific changes recommended by the Commission in the NPRM.

Sprint herein offers its comments on rule changes suggested in the NPRM. However, as Sprint discusses in more detail below, certain rules proposed in the NPRM may lead to more disputes and more delay, rather than the expedition. While Sprint supports the Commission's efforts to ensure expedition in the processing of complaints, there is, nevertheless, a comcomitant need to guard against ill-advised haste which would ultimately result in controversy and delay.

Moreover, in order to address the issue of delay more fully, the Commission will need to consider ways to reduce the time it

takes the Commission to render a decision after the case is ripe for decision. There are a number of instances in which the resolution of complaints have been delayed--and not because the complaint has not been processed expeditiously--but, rather, because the Commission or the Commission's staff has been unwilling to decide the matter that has come before it long after that matter has been ripe for decision.

II. RULES WHICH MAY PROMOTE EXPEDITION

Many of the changes suggested by the NPRM shorten response time for filing answers and oppositions and responses to interrogatories. Sprint agrees that such changes may result in more rapid development of a record in a complaint case which is ripe for decision. Nonetheless, Sprint notes that in many cases, especially those involving complex issues, more time may be needed in filing answers or briefs. Thus, there are likely to be more situations where parties can more easily make the necessary showing required for an extension of time.[1]

III. RULES WHICH ARE VAGUE OR MAY NOT PROMOTE EXPEDITION

The revisions to the rules limiting replies appear generally reasonable, with the exception of the proposal regarding replies to affirmative defenses. Under the new language, replies will be permitted only to "affirmative defenses that are factually different from any denials also contained therein" (NPRM at para.

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[1]Similarly, page limits for briefs are acceptable if the Commission permits requests for waiver in complex cases where the record is voluminous.

10). Sprint believes that this language is extremely vague and there may lead to disputes in interpretation about what is and is not factually different, especially when failure to reply is deemed an admission of such allegations (see Appendix, Proposed Rule Section 1.726, and related discussion NPRM at para. 10). Such disputes will take more time to resolve than implementation of a simpler and more easily administered rule which permits replies to affirmative defenses without a vague caveat.

Although Sprint supports several of the changes to the discovery rules, (e.g., incorporating protection for proprietary documents) Sprint believes some of the proposed changes in the discovery rules will not lead to the expeditious development of a record in a complaint case. For instance, under the proposed rules the "failure to answer [an interrogatory] will be deemed an admission for purposes of resolving the complaint." Such rule may not allow litigants to answer discovery questions in a responsive way. On the contrary, the Commission's approach here is vague enough to engender dispute over whether the answers are evasive. A better way to ensure responsive discovery is for the Commission to quickly rule on a discovery disputes.

Sprint also believes that further changes to the discovery rules are necessary to fulfill the goals of this rulemaking. Litigants seeking to review documents as part of the discovery process must file a motion requesting production of documents and wait for the Commission staff to rule on such motions before receiving the documents. Often documents are essential to developing a complete record in a complaint case. Interrogatories alone may be insufficient in this regard because

answers to written questions may not provide the level of information that review of the actual documents would provide. Even the most carefully-worded interrogatories may lead to carefully-worded responses which could conceal relevant information. The point is that the Commission then would need to spend time arguing about whether the answers are responsive or evasive and the goal of expedition would not be met.

Unfortunately, under the current procedures only interrogatories are self-executing. As stated, to obtain documents, litigants must take the extra time-consuming step of filing a motion and waiting for a staff ruling. Sprint believes that a better approach would be for document production also to be self-executing. Parties would be allowed to serve request for documents upon one another. Objections to providing particular documents could then be addressed by Commission staff at a status conference.

Comment is sought on whether "issues regarding relevance" should continue to be grounds for opposing an interrogatory or document request (NPRM at para 15). Disallowance of relevance objections could create more potential for abuse of the process than it eliminates, because such approach would permit parties to use the formal complaint process for harassment purposes instead of redressing legitimate complaints. If parties know that any question (whether or not it is relevant) can be asked, and refusal to answer based upon relevance is deemed an admission, the door is opened wider to "procedural ploys".

The most effective way to limit abuse of the discovery process is for the Commission to maintain strict control of the

process, and keep the process on track by making decisions about discovery issues in a timely manner. It is unrealistic to expect parties on different sides of a dispute in every instance to reach a negotiated compromise on discovery issues, when there is no incentive for the defendant to turn over any information.

Although the Commission prefers not to model its complaint procedures "precisely" upon the Federal Rules of Civil Procedure ("FRCP"), the NPRM makes reference to the FRCP, noting that they can give some "useful guidance" (see NPRM at fn. 3). However, some perspective from the FRCP may assist the Commission on discovery questions. Rule 26 of the FRCP allows discovery by oral examination, written questions, production of documents, requests for admissions, and physical and mental examinations regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. The frequency and use of discovery shall be limited by the court in several situations:

> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties" resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

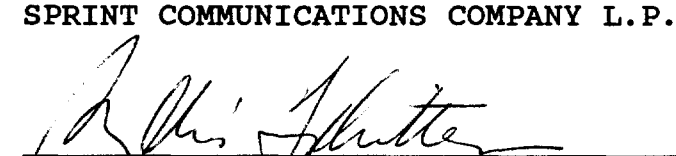
(see West's Federal Civil Judicial Procedure and Rules, 1991 Revised Edition).

The Commission staff, in its role as trier of fact for formal complaints, can expedite the process by exerting control and decisiveness in moving the parties through the discovery process. As is done by the judge in federal court proceedings, clear decisions need to be made and communicated about what is and is not discoverable. Then, if the Commission enforces compliance with such rulings, the process can be expedited considerably.

The preferable way to control the process, and move complaints along in an expeditious fashion is have the assigned Commission staff give clear guidelines to the parties about what areas are relevant and what type of information may be sought through the discovery process. Using the guidelines suggested in FRCP 26, the Commission staff could limit any discovery which appeared to be burdensome, oppressive, or otherwise abusive. The staff could refuse to permit any discovery which appeared to be interposed simply for the purpose of delay. If disputes arise a status conference could be convened to discuss the parties arguments about discovery procedure and the claims regarding relevance for particular areas in which discovery is proposed.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



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April 21, 1992

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of Sprint Communications Company L.P." was sent via first-class mail, postage prepaid, on this the 21st day of April, 1992, to the below-listed parties:

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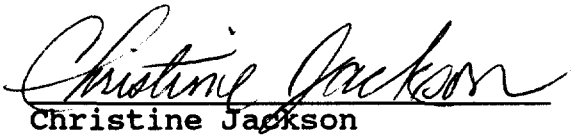

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April 21, 1992

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